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OFFICE OF PETITIONS

In re Application of
Eric Zimmermann
Application No. 10/750,577
Filed: December 29, 2003
Attorney Docket No. Zimmermann-1 PCT-US

**DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)**

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 3, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/US02/20917, filed July 1, 2002, and Nonprovisional Application No. 09/896,744, filed June 29, 2001, set forth in the amendment submitted concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements noted above.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Marianne Jenkins at (571) 272-3223.

This application is being forwarded to the examiner of Technology Center Art Unit 3634 for appropriate action on the amendment filed December 3, 2004, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to prior-filed PCT Application No. PCT/US02/20917, filed July 1, 2002 and Nonprovisional Application No. 09/896,744 filed June 29, 2001.


Frances M. Hicks

Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Corrected Filing Receipt